that the true purchase agreements were not a mirror of the truth.

I accordingly find that the transaction was one of loan on security rather than a genuine sale and reletting on hire-purchase. The plaintiff accordingly succeeds, and he is entitled to both the declarations prayed, because there was non-registration under the Bills of Sale Ordinance and no memorandum of the contract of loan as required by section 16 of the Moneylenders Ordinance. The defence of estoppel cannot arise and the counterclaim for arrears of hire likewise fails. Costs will follow the event. There will also be a consequential order that the ownership claim of the defendant to these five vehicles be cancelled by the Registrar and Inspector of Motor Vehicles.

*Order accordingly.*

Solicitors: *Joseph & Son; Braddell & Ramani.*

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## ABDUL SAMAD v. GAMMON & CHRISTIANI-NIELSEN

[O. C. J. (Gill J.) September 22, 1962]

[K.L. — Civil Suit No. 539 of 1961]

*Damages — Personal injuries — Right forearm and wrist — Multiple laceration and compound fracture — "Claw hand" — Assessment of disability.*

The plaintiff, a 32-year old ex-tailor, was employed by the defendants as a winch driver of their dredging crane. On February 1, 1961, in the course of his employment he was ordered by his foreman to remove the bearing counter weight when as a result of the negligence of the defendants the piston struck the plaintiff's right forearm in consequence of which he sustained severe injuries to his forearm and wrist. He claimed damages for the injuries suffered. As the defendants admitted liability, the only question before the Court was the quantum of damages.

Medical evidence produced at the hearing showed that the plaintiff suffered multiple lacerations of right hand and wrist involving wrist joint. He also suffered a compound fracture of the lower end of the ulna bone and the two main arteries of the hand, the median nerve and flexor muscle were severed. Two of the small bones of the wrist had been detached. As a result of these injuries the plaintiff had what is called a "claw hand", i.e. a hand in which the fingers are in a semi-flexed position. He could use his hand only for coarse work and not for refined movement, e.g. he could not do any writing because of the difficulty of securing a grip on a pen or pencil. There was also evidence that he would not be able to work as a winch driver any more because the grip of his hand was very weak, but there was possibility for him to do a bit of sewing with a mechanically operated machine although he would not be able to do any cutting unless he trained himself to use his left hand. The doctor assessed disability of his hand at 25%, which he said was worked out on the basis of workmen's compensation.

**Held:** (1) the assessment of disability on the basis of workmen's compensation had to be re-assessed in relation to whatever occupation the plaintiff engaged himself in, for instance, in this case, as a winch driver the plaintiff's disability would be 100%;

(2) taking into consideration his age, the ordinary hazards of life, pain and suffering which he suffered as a result of the injuries, the impairment and consequently the potential future earning capacity of the plaintiff and the loss of amenities, general damages $12,500 were reasonable. This and special damages of $496.50 were awarded with interest thereon at 6% p.a. from date of judgment to date of satisfaction and taxed costs.

*Cases referred to:—*

(1) *Pahang Lin Siong Motor Co. Ltd. & Anor.* v. *Cheong Swee Khai & Anor.* [1962] M.L.J. 29.

(2) *Jag Singh* v. *Toong Fong Omnibus & Co. Ltd.* [1962] M.L.J. 271.

(3) *Low Kwee Swee* v. *Chu Teck Tong & Anor.* [1962] M.L.J. lxxxiii.

CIVIL SUIT.

*Karam Singh* for the plaintiff.

*B. L. Ooi* for the defendants.

Gill J.: The plaintiff in this case was employed by the defendants as a winch driver in the dredging crane at Sungei Dua, Port Swettenham. On the 1st of February, 1961, at about 9.30 p.m. in the course of his employment he was ordered by his foreman on duty to remove the bearing counter weight when as a result of the negligence of the defendants, the piston struck plaintiff's right forearm in consequence of which he sustained severe injuries of his forearm and wrist. He brought the present action for damages for the injuries suffered by him. The defendants having admitted liability, the only question to be decided by the court was the quantum of damages.

The medical evidence produced at the hearing of the case on the quantum of damages showed that the plaintiff suffered multiple lacerations of right hand and wrist involving wrist joint. In addition he suffered a compound fracture of the lower end of ulna bone and the two main arteries of the hand, the median nerve and flexor muscle were severed. Two of the small bones of the wrist had been detached. As a result of these injuries the plaintiff has what is called a "claw hand," that is, a hand in which the fingers are in a semi-flexed position. He can use his hand only for coarse work and not for refined movement. For instance, he would not be able to do any writing because of the difficulty of securing a grip on a pen or pencil. The doctor further stated in evidence that he did not think that the plaintiff will be able to work as a winch driver any more because the grip of his hand is very weak, but he went on to say that it should be possible for the plaintiff to do a bit of sewing with a mechanically operated machine although he will not be able to do any cutting unless he trained himself to use his left hand. I mention this because the plaintiff gave evidence that before he was employed by the defendants he was a tailor in which employment he used to earn $150 to $200 a month and that even as a winch driver he used to do tailoring in the night and earn $60 to $70 a month.

There is no doubt that the plaintiff now has a permanently deformed hand. The doctor assessed disability of his hand at 25% which he said was worked out on the basis of workmen's compensation. This, however, will have to be re-assessed in relation to whatever occupation the

plaintiff engages himself in. For instance, as a winch driver his disability would be 100%. The doctor wound up his evidence by saying that plaintiff's hand is not entirely useless. It is still fairly useful to him and by exercise and training the plaintiff could make his hand a little more useful, although he hastened to add that there will be very slight improvement in plaintiff's hand with exercise and training.

The plaintiff is 32 years of age. Apart from the deformity of his hand, he would appear to be a normal healthy person with a reasonable expectation of a normal healthy life, barring accidents, of at least another twenty years. His wages as a winch driver were $5.20 a day. He stated in his evidence that he earned an additional six to seven dollars per day for overtime. In cross-examination, however, he admitted that his average daily earnings for overtime would be $3.00 to $3.50. He also claimed that he earned about $60 a month by sewing clothes for other people during his spare time. In this connection he produced a witness who stated that on one occasion he got the plaintiff to make two shirts for him for which he paid him $5.00 I do not believe that the plaintiff earned very much as a spare time tailor, if he earned anything at all. In my opinion, his total monthly wages including extra wages for overtime could not have exceeded $220.

In assessing damages for the plaintiff, I had in mind the decisions of the Court of Appeal in the cases of *Pahang Lin Siong Motor Co. Ltd. & Anor.* v. *Cheong Swee Khai & Anor.* [1] and *Jag Singh* v. *Toong Fong Omnibus & Co. Ltd.*[2] to which I was referred by learned counsel for the plaintiff. I also had in mind the decision of Ismail Khan J. in the case of *Low Kwee Swee* v. *Chu Teck Tong & Anor.* [3], a digest of which appears at page lxxxiii in the July 1962 issue of the *Malayan Law Journal*. I also took into consideration the plaintiff's age, the ordinary hazards of life, the pain and suffering which the plaintiff suffered as a result of the injuries, the impairment and consequently the potential future earning capacity of the plaintiff and the loss of amenities. Taking all these factors into consideration, I considered a sum of $12,500 as a reasonable sum for general damages, from which was deducted a sum of $280 which the plaintiff had admittedly received by way of advances from the defendants. I awarded a sum of $496.50 for special damages and thus gave judgment to the plaintiff for $12,716.50 with interest thereon at 6% per annum from the date of judgment to the date of satisfaction and taxed costs.

*Order accordingly.*

Solicitors: *Kaher Singh & Karam; Shearn Delamore & Co.*

## SYNN LEE & CO. LTD. v. BANK OF CHINA

**[C. A. (Thomson C.J., Hill and Good JJ.A.) September 25, 1962]**

**[Penang — F.M. Civil Appeal No. 8 of 1962]**

*Banking law — Cheques — Claim as holder in due course — Arrangement to draw against cheques before clearance — Whether arrangement existed.*

*Appeal — Findings of fact — Judgment based on.*

*Evidence Ordinance, 1950, s.114, ill. (g) — Non-production of documents — Presumption — Discretion of Court.*

The facts of the case and the issues involved are fully stated in the judgment of Hepworth J. ([1962] M.L.J. 91).

This was an appeal from the judgment of Hepworth J., *ante* p. 91. The only question really in issue on appeal was whether or not there were arrangements between the plaintiffs and the firm Heng Moh & Co., in whose favour the cheques in question in this case were drawn by the appellants, in consequence of which the bank became holders for value of the cheques.

Before the Court of Appeal it was argued that the vouchers which related to the cheques and which were not produced at the trial were in the possession of the bank and that therefore the presumption as laid down in section 114, illustration (g) of the Evidence Ordinance should operate.

At the trial there had been no mention of these documents until at a late stage. The respondents' counsel then asked for an adjournment to produce them. Counsel for the appellants objected as a result of which the application was refused.

**Held** in dismissing the Appeal: this was not a proper case for the operation of the presumption in section 114, illustration (g) as the appellant had not as a matter of ordinary prudence taken steps to obtain discovery of these vouchers whether or not they were enumerated in the schedules to the bank's affidavits. Further as the respondents' counsel was prepared to produce these vouchers at the trial if the necessary adjournment was given, but as this was opposed by the appellants they should have no cause for complaint and they are not entitled at the trial to rely in any way on the non-production of the vouchers.

*Cases referred to:—*

(1) *Bilas Kunwar* v. *Desraj Ranjit Singh*, 42 I.A. 202, 206; A.I.R. 1915 P.C. 96; I.L.R. 37 All 557.

(2) *T.S. Murugesam Pillai* v. *M.D. Gnana Sambandha Pandara Sannadhi & Ors.* A.I.R. 1917 P.C. 6; I.L.R. 40 Mad. 402; 44 I.A. 98.

COURT OF APPEAL.

*Ng Ek Teong* for the appellants.

*Eusoffe Abdoolcader* for the respondents.

*Cur. Adv. Vult.*

**Thomson C.J.:** I have had the benefit of reading the judgment of Hill J.A. I agree with his conclusions and there is very little I can usefully add.

The facts of the case and the issues involved are fully stated in the admirably lucid judgment of Hepworth J.